

REMARKS

The Examiner is thanked for the thorough examination of the present application. This filing is made in response to the Final Office Action dated August 24, 2010 ("FOA"). As presented below, pending claims 1, 4-32 and 34 are believed allowable, with claims 1, 12, 21, 23, 25, 27, 29 and 31 being independent claims.

CLAIMS 1, 4-32 AND 34 ARE ALLOWABLE

Claims 1, 4-8, 10-18, 20-32 and 34 were rejected under 35 U.S.C. § 102 in the Final Office Action dated August 24, 2010 as being anticipated by U.S. Patent Application Publication No. US 2002/0194010 ("Bergler"). FOA, pp. 4.

The MPEP § 2131 defines the standard for anticipation as follows:

The identical invention must be shown in as complete detail as is contained in the ... claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990). MPEP § 2131 (emphasis added).

In other words, if there is not identity of terminology, then it is the Examiner's burden to provide adequate support from the reference for a valid equivalency argument.

The Applicants argue that Bergler fails to disclose an exchange token as recited in the independent claims. See Applicants' Response filed 6/12/10. For example, claim 1 recites in part, "enabling user access to an exchange token, dependent on the current data token supplied by the licence management

server, whereby the exchange token can be supplied as a current data token to another said software controller.”

In response, the Final Office Action points out that paragraph [0086] of Bergler discloses that if a license has not been issued to a different client, the same license would be reset and reissued to the same client. FOA, pp. 3. “The ‘same’ license (being the exchange token: because it is being used again after updates) and when is being reset and updated being the current data token. Therefore Examiner maintains that Bergler does teach and suggest this limitation.” Id. The Applicants respectfully disagree with this position for the reasons below.

Claim 1 recites a current data token representing a licence for the software product and an exchange token that can be supplied as a current data token to another software controller. According to the Application, “The licence can also be legitimately transferred to a new software controller 52b in the event of a failure at user device 53. In this case, the user simply supplies the exchange token 57 to the new software controller 52b.” Application, ¶ [0064]. Advantageously, a user would not have to wait until the current data token expires before using the software product on a replacement device if the current device fails.

As the Examiner points out, Bergler discloses, “If this ‘same’ license has not been issued to a different client, it will be available in the available license pool 314 for updating and issuing to the same client.” Bergler, ¶ [0086] (emphasis added). Thus, the position taken in the Final Office Action, that the “same license” is equivalent to the exchange token, fails because Bergler does not disclose or suggest an exchange

token can be supplied as a current data token to another software controller for controlling use of a software product at a user device.

The independent claims further detail that the exchange token can be used to replace a current data token for use at a different client device. For example, claim 1 recites, "the exchange token can be supplied as a current data token to another said software controller" and "supplying one of the current data token and the exchange token via the network to the licence management server to be exchanged for a new data token to replace the current data token (a) to extend the licence for the software product beyond the use period associated with a current data token supplied by the licence management server and (b) if the current data token is an exchange token from another said software controller." Again, Bergler fails to disclose an exchange token that can be used to replace a current data token for use at a different client device.

For the reasons set forth above, the *prima facie* case of anticipation for claims 1, 12, 21, 23, 25, 27, 29 and 31 fails because the identical invention is not shown in as complete detail as is contained in the claims. Their respective dependent claims, which recite yet further distinguishing features, are also patentable over the prior art and require no further discussion herein.

CONCLUSION

In view of the forgoing remarks, it is respectfully submitted that this case is in condition for allowance and such action is respectfully requested. If any points remain at issue

that the Examiner feels could best be resolved by a telephone interview, the Examiner is urged to contact the attorney below.

No fee is believed due with this Amendment, however, should such a fee be required please charge Deposit Account 50-0510 the required fee. Should any extensions of time be required, please consider this a petition thereof and charge Deposit Account 50-0510 the required fee.

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Respectfully submitted,

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